

Retaliation: Court Says Independent Contractor Has No Right To Sue For Wrongful Discharge.

As a general rule the law allows an employee to sue a former employer for wrongful discharge when the employer has terminated the employee in retaliation for exercising a legal right. In the healthcare context these lawsuits sometimes follow after employees take up their patients' causes and complain about substandard or improper care.

When healthcare workers complain to proper legal authorities about violations by their employers of laws or regulations for patient-care standards and are terminated, the workers are routinely able to go to court to obtain compensation for wrongful discharge.

The courts do not honor the employer's traditional right to fire an at-will employee at any time for any reason when the employee has been trying to vindicate an important public policy. The courts value patients getting the care they deserve more highly than employers being able to fire or retain whomever they choose.

However, as the Supreme Court of Iowa recently observed, US courts generally do not extend this same protection to healthcare workers who are independent contractors rather than employees.

In this case a part-time consulting social worker at a nursing home was not an employee of the nursing home. She was an independent contractor with her own consulting business.

She went to the State Department of Inspection with her concerns that the nursing home's outright ban on smoking by residents was a violation of their legal rights.

When she did so the nursing home promptly cancelled her consulting contract, although she was paid for an additional month.

The court did not get into the issue whether nursing home patients can or cannot smoke. The only issue was that an independent contractor, not being an employee, has no right to sue for retaliation. Harvey v. Care Initiatives, Inc., 634 N.W. 2d 681 (Iowa, 2001).

Penrose Drain: Nurse Should Have Been Alerted To A Problem By Its Appearance After Removal.

After kidney surgery a Penrose drain was inserted into the patient's surgical wound to promote post-operative drainage.

A Penrose drain basically is just a length of soft plastic tubing.

The patient's nurse had orders from the surgeon to remove the drain three days post surgery. The nurse had over thirty years experience in post-operative care and had removed more than a hundred Penrose drains. To remove a Penrose drain the nurse or physician simply pulls it out.

In this case a 5.5 centimeter portion of the drain was left inside the patient. It was discovered during imaging studies three months later ordered because of the patient's continuing complaints of pain.

When resistance is encountered removing a Penrose drain from a surgical incision and the end comes out with an irregular jagged appearance, a competent nurse or physician should know there is a problem.

If a portion of a Penrose drain has broken off and remains inside the patient's body the physician will have to decide whether to go back in and remove it.

SUPREME COURT OF WASHINGTON,
2001.

According to the Supreme Court of Washington, it is not necessarily negligent to keep pulling on a Penrose drain when resistance is encountered.

However, when resistance is encountered and the end that was in the patient comes out jagged a nurse should know something is wrong, that is, a portion of the drain is still inside.

At that point the nurse has a legal duty to bring it to the surgeon's attention for follow-up evaluation and a medical decision how to proceed.

The court said the drain theoretically could have been that way when placed in the wound or it could have been sutured inside by the surgeon, but that was so unlikely that the surgeon was dismissed from the lawsuit. Miller v. Jacoby, 33 P. 3d 68 (Wash., 2001).